

Internal Revenue Service

Number: **201327008**
Release Date: 7/5/2013
Index Number: 528.04-00

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B05
PLR-151288-12

Date:
April 02, 2013

LEGEND:

Taxpayer =

Year 1 =

Year 2 =

Dear :

This letter responds to a letter, dated September 7, 2012, and subsequent correspondence, submitted on behalf of Taxpayer, requesting permission to revoke an election under § 528 of the Internal Revenue Code for its tax years ending Year 1 and Year 2.

The information submitted and the representations made are as follows: Taxpayer, a homeowners association, hired an accounting firm to prepare its federal income tax return for its tax year ending Year 1. The accounting firm prepared Form 1120-H for Year 1 and advised Taxpayer that it could not claim a § 48 energy credit by filing Form 1120. Taxpayer, relying on the accounting firm, filed the Form 1120-H for Year 1, and made an election under § 528.

Taxpayer hired a new accounting firm. The new accounting firm eventually advised Taxpayer of the option to file Form 1120 for Year 1 to claim the § 48 energy credit. The Taxpayer was advised by the Service that it must seek a private letter ruling to obtain permission to revoke a § 528 election. Taxpayer then filed this request to revoke the elections under § 528 for its tax years ending Year 1 and Year 2.

Section 528 provides that certain homeowners associations may elect to be treated as tax-exempt organizations, but only to the extent of their exempt function income. Exempt function income consists solely of amounts received as membership dues, fees, or assessments from owners of residential units or residential lots.

Section 1.528-8(a) of the Income Tax regulations provides that a separate election to be treated as a homeowner's association under § 528 must be made for each taxable year. The election is made by filing a properly completed form 1120-H.

Section 1.528-8(f)(1) provides that an election to be treated as a homeowners association is binding on the organization for the taxable year and may not be revoked without the consent of the Commissioner.

Section 48(a)(3)(A)(i) defines energy property for purposes of the § 48 energy credit to include equipment that uses solar energy to generate electricity, to heat or cool (or provide hot water for use in) a structure, or to provide solar process heat.

Under § 50(b)(3), the § 48 energy credit is not allowed for any property used by an organization that is exempt from tax unless the property is used predominantly in an unrelated trade or business the income of which is subject to tax under section 511.

Rev. Rul. 82-203, 1982-2 C.B. 109, and Rev. Rul. 83-74, 1983-1 C.B. 112, set forth situations in which the consent of the Commissioner was requested to revoke an election under § 528. These revenue rulings provide that considerations or factors similar to those described in Rev. Proc. 79-63, 1979-2 C.B. 578 (factors that were taken into consideration by the Commissioner in determining whether an extension of time for making an election will be granted under the former regulation § 1.9100-1) were appropriate in determining whether taxpayers would be permitted to revoke previous elections made under § 528. Factors that are given consideration are now found in §§ 301.9100-1 through 301.9100-3 of the Administrative and Procedure Regulations. When applied to a request for the revocation of a § 528 election, these considerations require that the taxpayer requesting permission to revoke its election must establish that (1) the taxpayer acted reasonably and in good faith, and (2) the granting of relief would not prejudice the interest of the government.

Rev. Rul. 82-203 holds that a homeowners association will not be permitted to revoke elections made under § 528 in previous years to obtain the benefit of a net operating loss incurred in a subsequent year.

Based solely on the information submitted and the representations made, we conclude that the requirements of §§ 301.9100-1 through 301.9100-3 have been satisfied. Accordingly, Taxpayer is granted permission to revoke the elections made under § 528 for its tax years ending Year 1 and Year 2, provided that the revocations are not sought in order to obtain the benefit of a net operating loss incurred in a

subsequent tax year. We note that § 277 will apply to Taxpayer if a § 528 election is not in effect. See, Rev. Rul. 90-36, 1990-1 C.B. 59.

Taxpayer must file properly completed Forms 1120-X (Amended U.S. Corporation Income Tax Return) for Year 1 and Year 2 within 120 days of the date of this ruling. A copy of this ruling must be attached to each Form 1120-X. Taxpayer should also attach to the Form 1120-X for Year 1 the original Form 872 Consent to Extend the Time to Assess Tax that was signed by the Associate Chief Counsel (Passthroughs and Special Industries) on September 13, 20 .

Upon the revocation of elections under § 528, any amount received as membership dues, fees, or assessments that would qualify as exempt function income under § 528(d)(3) will not be treated as exempt, and such amount must be included in calculating taxable income for purposes of Form 1120 or Form 1120-X.

The rulings contained in this letter are based upon information, declarations, and representations submitted by Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. Because this office has not verified any of the material submitted in support of the request for a ruling, it is subject to verification on examination.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter including Taxpayer's eligibility for a § 48 energy credit. Moreover, we express no opinion concerning the assessment of interest, additions to tax, additional amounts, or penalties for failure to file an income tax return with respect to any year.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with a power of attorney on file with this office, we are sending a copy of this letter to Taxpayer's authorized representative.

Sincerely yours,

/s/ *Paul Handleman*

Paul Handleman,
Chief, Branch 5
Office of Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure:
Original Form 872